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W.A.No.3084 of 2024 and
C.M.P.No.23363 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.3084 of 2024 and

C.M.P.No.23363 of 2024

1. The Principal Secretary to
Government of Tamil Nadu (FAC),
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai.

... Appellants/Respondents

-vs-

J.Vanitha

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 27.02.2023 made in W.P.No.10958 of 2016 and allow the Writ Appeal.

For Appellants : Mr.B.Vijay

Addl. Govt. Pleader

For Respondent : Mr.V.P.Senguttuvel, Senior Counsel

For Ms.S.Deepa

J U D G M E N T

(By D.KRISHNAKUMAR,J.)

This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 27.02.2023 made in W.P.No.10958 of 2016, by which, learned Single



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Judged directed the respondents therein to grant notional promotion to the petitioner for the post of District Registration by including her in the panel for the year 2014-2015 on par with her immediate junior in the said post.

2. The case of the appellants is that the respondent/Writ Petitioner was selected as Sub Registrar Direct Grade II by Direct Recruitment on 01.09.2008 and successfully completed her probation in the year 2010. She was subsequently promoted as Sub Registrar Grade I and now, she has been working as Sub Registrar, Achirapakam Sub Registrar Office in Chengalpattu Registration District. Further case of the appellants is that while so, a panel for the post of District Registrar for the year 2014-2015 was prepared by the Department and she was not included in the panel on the ground of pendency of charges. Aggrieved by the non inclusion in the panel, she had filed a Writ Petition and obtained an order from the Writ Court in her favour, challenging which, the intra Court appeal has been preferred by the Department.

3. Assailing the order of the Writ Court, Mr.B.Vijay, learned Additional Government Pleader for the appellants submitted that on the date of preparation of panel for the year 2014-2015, charges had been framed against the respondent herein on 21.10.2014 and 19.09.2015 respectively and therefore, her name was not considered for



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inclusion in the panel. The said aspect has not been considered by the Writ Court in a proper perspective in terms of the judgment of this Court dated 04.12.2020 passed in W.A.(MD) No.64 of 2019 and hence, the order of the Writ Court is liable to be set aside.

4. Learned Senior Counsel for the respondent contended that the Writ Court, upon considering all the averments made by the Writ Petitioner, rendered its finding in depth and allowed the Writ Petition. According to him, the crucial date for preparation of panel for the year 2014-2015 was fixed on 01.04.2014 and on that date, there was no charges framed against the respondent memo, as the charges had been framed only on 21.10.2014 and 19.09.2015.

5. Though Mr.B.Vijay, learned Additional Government Pleader for the appellants has not refuted the aforesaid contention raised by the learned Senior Counsel for the respondent, he pointed out that the penal for the post of District Registrar for the year 2014-2015 was drawn only on 26.02.2016 and at that point of time, charges were pending against the respondent and therefore, the name of the respondent was rightly deferred by the appellants.



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6. In reply to the above, learned Senior Counsel for the respondent argued that the submission of the appellants is contrary to the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (in short 'the Act, 2016') and therefore, the Writ Court rightly rejected the argument of the appellants and there is no need to interfere with the order of the learned Single Judge.

7. Learned Additional Government Pleader relied upon Schedule XI Part-A (II) (5) of the Act, 2016 to state that on the actual crucial date for the panel drawn, charges were framed and therefore, the name of the respondent need not be considered for inclusion in the panel. This aspect has been considered by the Division Bench of this Court in W.A.(MD) No.64 of 2019 decided on 04.12.2020, wherein in Paragraph Nos.15 and 16, it was held as under:

“15. The law laid down by the Hon'ble Supreme Court in the above cases should be applied to the case at hand. The applicable statute is the Conditions of Service Act and, in particular, the relevant paragraphs of Schedule XI thereto. As stated in paragraph 11 supra, as per sub-para (1) of paragraph II of Schedule XI thereof, the promotion of an employee against whom there is a pre-charge memo/pre-charge sheet enquiry would be considered on merit but if charges have been framed or a charge sheet filed, the promotion would be deferred. Indeed, it is expressly stipulated therein that "in cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded." From the above extract, it is evident that the critical event is the framing of charges or the filing of a charge sheet, as the case may be, and not the commencement of disciplinary proceedings. 16. In



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Jankiraman, as is evident from paragraph 16 thereof, the Supreme Court was unwilling to permit the sealed cover procedure in respect of an enquiry before the charge memo is issued because there is often inordinate delay in framing charges or charges are not framed at all and, in such event, the employee concerned would be put to prejudice. By contrast, in this case, the charges were framed on 22.06.2017, even before the temporary promotion order was issued, albeit there was a delay in communication thereof. Although it is true that the crucial date was 01.04.2017 and, as on that date, the charge memo had not been prepared, the charge memo was admittedly prepared before the temporary promotion order was issued. As stated earlier, once charges were framed by finalizing the charge memo, sub-para (1) of paragraph II of Schedule XI of the Conditions of Service Act gets activated. Therefore, in the present statutory context, the fact that the disciplinary proceeding against the Respondent commenced only upon service of the charge memo, as per the ratio in Jankiraman, does not lead to the inference that the Respondent is entitled to promotion notwithstanding the charge memo. To put it differently, the commencement of disciplinary proceedings is distinct from the deferment of promotion, which gets triggered once charges are framed.”

8. Learned Senior Counsel for the respondent strenuously contended that the provision relied upon by the appellants is not applicable to the facts of the present case, as it refers to the criminal case, not the departmental proceedings and there was no charges framed as on 01.04.2014 and therefore, there is no bar for the appellants to include the respondent in the panel. He drew our attention to Schedule XI Part-A (II) (8) of the Act, 2016, which contemplates that “Pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list”, which is not the case herein and thus, prayed for rejection of the contention of the appellants.

9. In a similar issue, a Division Bench of this Court in W.A.Nos.271 of



2020 and 626 of 2021 decided on 02.09.2021, referring to various pronouncements on the identical matter, considered this aspect and held as follows:

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"16. It is not out of place to mention that in a catena of decisions, various Division Benches of this Court deprecated similar actions of the authorities and extended benefits to the employees/Government servants. One such recent decision is the judgment of a Division Bench of this Court in V.Visweswaran V. Director of Handloom and Textiles, (2021) 5 MLJ 97, wherein, in paragraph 4, it has been held as follows:

"3.The only issue which falls for consideration in this appeal is whether the appellant's name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 which reads as follows:

"Mere filing of cases in Courts by the appropriate investigation Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list".

4. In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the crucial date ie., 01.03.2014, there was no charge proceedings pending and charge memo was issued only on 12.01.2015. In the light of Section 7 of the conditions of Service Act, the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, Section 7(1). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principal."



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17. In the light of the above judgments, it is to be stated that the name of writ petitioner in W.P.No.10402 of 2011 (appellant in W.A.No.271 of 2020) ought to have been included in the panel for the year 2007-2008. It has been categorically found that the panel was drawn only on 05.02.2010, when the crucial date was on 01.04.2007 and on both the dates, there was no charge memo issued/pending against him.”

10. In yet another case, a Division Bench of this Court in W.A.No.2986 of 2023 decided on 02.11.2023 observed as under:

“7. In similar circumstances, a Division Bench of this court in WA(MD)No.846 of 2019 by judgment dated 22.06.2021, referring to section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, has allowed the writ appeal and directed the authorities to consider the candidature of the appellant for inclusion in the panel for promotion.

8. In the light of the decisions and admitted position as referred to above, the stand so taken on the side of the appellants cannot be countenanced by this court; and citing the charge memo for not including the name of the respondent in the panel for promotion to the post of Senior Electrical Inspector for the year 2018-19, is not sustainable, as rightly observed by the learned Judge. Therefore, this court does not find any reason to interfere with the order of the learned Judge.”

11. Recently, another Division Bench of this Court in W.A.(MD) No.1094 of 2024 decided on 12.07.2024, touching upon the very same point, held as follows:

“14. In fact, even the enquiry conducted in the second charge memo, dated 23.08.2007 had ultimately ended in favour of the respondent and the second charge also came to be dropped. In effect, both the charges issued as against the respondent, first on 16.12.2005 and the second on 23.08.2007, had, ultimately, been dropped and the respondent was also exonerated from the charges levelled against him. The charges issued on 16.12.2005 came to be dropped on 06.01.2007 and as referred earlier, on the crucial date of 01.03.2007, no charges were pending as against the respondent. Even the second charge memo was issued only on 23.08.2007



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and there was no impediment for the appellants for having included the name of the respondent in the year 2005-06 panel fit for promotion to the post of Assistant Director of Panchayat.

15. As it is brought to the notice that based on the panel prepared for the 2005-06, the junior of the respondent was promoted to the post of Assistant Director of Panchayat on 26.04.2007, which reveals that the vacancy was available as on 26.04.2007 for the respondent to be promoted as Assistant Director of Panchayat.

16. The learned Judge by taking note of all the above facts, particularly, that on the crucial date on 01.03.2007 for the panel year 2005-06, there were no charges pending as against the respondent and the subsequent charge issued on 23.08.2007 cannot be taken to be an impediment for including the name of the respondent in the 2005-06 panel and also by relying the decisions of the Hon'ble Supreme Court in the case of Bank of India and another vs Degala Suryanarayana, reported in (1999) 5 SCC 761 and in the case of Delhi Jal Board vs Mahinder Singh, reported in (2000) 7 SCC 210, and also by relying on the unreported judgment of the Division Bench of this Court in W.A.No.2335 of 2019, dated 07.10.2020 in the case of The Principal Secretary to Government and others vs Ram Kumari, had set aside the impugned order of rejection in the Writ Petition and had directed the appellants to promote the respondent to the post of Assistant Director of Panchayat with effect from the date on which his junior was promoted and confer all attendant and monetary benefits within a period of twelve weeks.

12. On the whole, this Court had uniformly come to the conclusion that in the absence of charges framed on the crucial date, the Department cannot mechanically deny inclusion of the name of employees in the panel. Insofar as Schedule XI Part-A (II) (5) of the Act, 2016 is concerned, the said provision is applicable where charges have been framed and filed before the Criminal Court and not otherwise and in such an event, the Department need not consider to include the name of an employee. In this case, there

is no criminal case pending against the respondent and only charge memo has been issued.

13. Mr.B.Vijay, learned Additional Government Pleader for the appellants, to strengthen his argument, further referred to Schedule XI Part-A (II) (10) of the Act, 2016, which states as follows:

“(10) The name of a member of service placed under suspension on the crucial date or on the date of consideration for actual promotion shall not be considered for inclusion in the approved list or for actual promotion, as the case may be and his name shall be deferred till finalisation of disciplinary proceedings.”

We have gone through the aforesaid provision, which enumerates that when there is a suspension of an employee on the crucial date or on the date of consideration for actual promotion, inclusion of the name of an employee can be deferred. However, this provision is will not come handy to the appellants for the simple reason that the respondents was not placed under suspension on the crucial date or on the date of consideration for actual promotion.

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14. In view of what is stated herein-above and following the earlier

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judgments of the Division Bench rendered on this issue, we have no hesitation to hold that the order of the learned Single Judge is liable to be upheld and the order of the Writ Court is perfectly valid that does not warrant any interference by this Court.

15. Accordingly, this Writ Appeal is dismissed. The appellants are directed to comply with the order of the learned Single Judge within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K,J.] [P.B.B,J.]
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Index: Yes
Internet: Yes
Speaking Order/Non Speaking Order
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